

## BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:	)	
	)	
Opinion Requested by:	)	No. 75-075-B
Robert H. Nida,	)	Jan. 4, 1977
Associate Counsel,	)	
Automobile Club of Southern	)	
California	)	
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BY THE COMMISSION: We have been asked the following questions by Robert H. Nida, Associate Counsel, Automobile Club of Southern California:

The Automobile Club of Southern California (hereinafter the "Club") is an employer of a lobbyist and files periodic reports pursuant to Government Code Sections 86108(a) and 86109. The Club publishes maps and various informational publications which it occasionally provides to agency officials, legislative officials and elected state officers free of charge. The maps and publications are furnished under a variety of circumstances, among which are the following:

- (1) Publications such as "The Automotive Repair Act and What it Means to You," "How to Buy a New Car," and "How to Buy a Used Car" have been provided to the Department of Consumer Affairs for distribution to the public;
- (2) Approximately 6,000 copies of the "Digest of Traffic Legislation," a publication prepared jointly by the Club, another club, the California Highway Patrol and the Department of Motor Vehicles which annually summarizes changes in the Vehicle Code, are given to various state agencies for distribution to state employees;
- (3) An unspecified number of copies of a technical publication entitled "Realistic Speed Zoning -- Why and How," which is designed for use by traffic engineers, has been given to the Department of Transportation;
- (4) Copies of the California Vehicle Code have been given to certain state employees upon request;

- (5) Special wall maps covering a designated area have been developed and provided to field offices of the California Highway Patrol, and similar maps have been provided to legislative field offices;
- (6) Folding maps have been provided to the Department of Transportation and other state agencies for use by their employees;
- (7) The Legislature has been authorized to use the Club's copyrighted base maps in developing reapportionment maps, which are printed at state expense; and
- (8) Publications have been given to elected state officers for distribution to the public.

The Club has asked whether providing the maps and publications under any of the foregoing circumstances constitutes a gift within the meaning of Government Code Section 82028. The Club also has asked whether the costs attendant to these activities are reportable as payments to influence legislative or administrative action within the meaning of Government Code Section 82045.

#### CONCLUSION .

The Club's practice of providing maps and publications under the enumerated circumstances does not fall within the definition of a gift because the materials provided are "informational." Government Code Section 82028. Furnishing these materials free of charge may, however, constitute a payment to influence legislative or administrative action which will be reportable pursuant to Government Code Section 86109(c). The circumstances under which a payment to influence will occur include the following: providing the materials to support or assist the Club's lobbyist when he is attempting to influence a matter pending before the Legislature or another state agency; providing the materials to a state agency (including the Legislature) or to an agency official, legislative official or elected state officer at the request or suggestion of the Club's lobbyist when the request or suggestion is related to an attempt to influence legislative or administrative action; providing the materials as part of an effort by the Club to influence some specific legislative or administrative action pending before the Legislature or another state agency, regardless of whether the Club's lobbyist is involved in the effort; providing the materials directly to an agency official, legislative official or elected state officer under circumstances in which the recipient official will derive some personal benefit from the materials; and

providing the materials to an elected state officer for distribution to the public. On the other hand, it generally will not constitute a payment to influence legislative or administrative action when the Club gives the maps or publications to an agency official, legislative official or elected state officer for his or her own use and the material is exclusively job related; or when the Club provides these materials to a state agency or to an agency official or a legislative official for distribution on a generalized basis to state employees for use in their work or for distribution to the public. It is this latter category which is applicable to most of the examples specified by the Club.

#### ANALYSIS

The definition of the term "gift" specifically excludes "informational material such as books, reports, pamphlets, calendars or periodicals." Government Code Section 82028.<sup>1/</sup> We think that the maps and publications provided by the Club are "informational material" and, therefore, conclude that furnishing these materials to agency officials, legislative officials and elected state officers free of charge does not constitute a gift.

We add to this conclusion, however, one caveat. On occasion, maps provided to agency officials and elected state officers have been converted to use as wall decorations rather than being used as sources of information. We think that when the Club knows or has reason to know that a map will be used for decorative purposes, furnishing the map will constitute a gift.<sup>2/</sup>

Informational material was excluded from the definition of the term "gift" to insure that the Political Reform Act would not inhibit the flow of necessary information from private sources to government officials. This purpose will not be frustrated by treating material which is ostensibly informational but in fact decorative as falling within the definition of the term "gift."

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

<sup>2/</sup> If a map which was provided for informational purposes later is converted by the recipient to use as a decoration, and the Club did not know or have reason to know at the time it provided the map that this would occur, furnishing the map will not constitute a gift.

Turning to whether the costs attendant to providing the maps and publications will be reportable as payments to influence legislative or administrative action, we observe at the outset that informational material is expressly included in the definition of what constitutes influencing legislative or administrative action. Section 82032 states that influencing legislative or administrative action includes "the provision ... of information, statistics, studies or analyses." Accordingly, the exclusion of informational materials from the definition of what constitutes a gift is not relevant to a determination of whether such materials can trigger a reportable payment to influence legislative or administrative action.

With respect to what does constitute a payment to influence legislative or administrative action, the focus of our inquiry is Section 82045. Section 82045 specifies five types of payments which are reportable by a lobbyist employer pursuant to Section 86109(c) as payments to influence legislative or administrative action. They are:

(a) Direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing or contracting for the services of the lobbyist separately or jointly with other persons;

(b) Payment in support or assistance of a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(c) Payment which directly or indirectly benefits any elective state official, legislative official or agency official or a member of the immediate family of any such official;

(d) Payment, including compensation, payment or reimbursement for the services, time or expenses of an employee, for or in connection with direct communication with any elective state official, legislative official or agency official;

(e) Payment for or in connection with soliciting or urging other persons to enter into direct communication with any elective state official, legislative official or agency official.

It is clear that subsections (a) and (e) are not relevant to the activities about which the Club has inquired. In addition, subsection (d) will be implicated only if the

maps and publications are provided "in connection with direct communication" with a government official by a Club employee or some other individual when the purpose of the communication is to influence legislative or administrative action. See 2 Cal. Adm. Code Section 18620(a)(4).<sup>3/</sup> The Club has not provided any examples of the circumstances under which this does or may occur and, therefore, we limit our discussion to subsections (b) and (c).

Section 82045(b) requires reporting of all payments "in support or assistance of a lobbyist or his activities, including ... the direct payment of expenses incurred at the request or suggestion of the lobbyist." We think it is clear that if the Club's lobbyist is attempting to influence a state agency, the definition of which includes the Legislature (Section 82049), and the Club provides the agency's officials with a publication to support or assist the lobbyist's efforts to influence the matter pending before the agency, this will involve a payment to influence within the meaning of Section 82045(b). In addition, if the Club's lobbyist requests or suggests that the Club provide maps or publications to agency officials, legislative officials or elected state officers, or to their respective agencies in connection with an attempt to influence legislative or administrative action, this too will constitute a payment to influence if the Club complies with the request.

This does not mean, however, that every positive response by the Club to a request by its lobbyist to provide publications will entail a payment to influence under Section 82045(b). Agency and legislative officials occasionally contact the Club's lobbyist and ask that he obtain certain publications for them because the lobbyist is the only Club employee they know and it is convenient to funnel their requests through him. When the lobbyist requests publications under these circumstances, and the publications are not related to an attempt to influence legislative or administrative action, providing the publications will not generate a Section 82045(b) payment to influence.

Moreover, another limitation on payments to influence which is generally applicable to Section 82045, is 2 Cal. Adm. Code Section 18600. Pursuant to this regulation, reporting obligations extend only to agency officials "of those agencies which are or should be listed on the lobbyist's registration statement" (2 Cal. Adm. Code Section 18600(a))

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<sup>3/</sup> When the communication is by an individual other than a Club employee, the individual must be acting on behalf of the Club in order for the Club to have made a payment to influence legislative or administrative action.

and "those agencies whose administrative actions [the Club] has attempted or is attempting to influence" (2 Cal. Adm. Code Section 18600(b)). Payments to other agency officials are not reportable, even though the circumstances may be such as would otherwise be comprehended by Section 82045.

Finally, we think that one further limitation on the Club's reporting obligations pursuant to Section 82045(b) is appropriate. If a map or publication is available to the general public on the same terms that it is available to a state agency, providing it to a state agency, even at the request or suggestion of the Club's lobbyist, will not constitute a Section 82045(b) payment to influence.

We now turn to Section 82045(c), the other category of payments to influence legislative or administrative action which may be applicable to the Club's activities with respect to providing maps and publications free of charge. Section 82045(c) requires reporting of any payment which "directly or indirectly benefits" any agency official, legislative official or elected state officer. The provision, however, does not specify the type of benefit which it encompasses. We can discern, for example, three different types of "benefits" which may be involved in the Club's practice of providing maps and publications. First, there is the type of benefit which results whenever the Club gives a map or publication directly to an agency official, legislative official or elected state officer for his or her own use. Second, there is the type of benefit which will accrue to these officials when their agencies are given a large number of maps or publications to distribute on a generalized basis to the officials of the agency for use in the performance of their official duties. This category would include, for example, the Club's practice of providing 6,000 copies of the "Digest of Traffic Legislation" to various state agencies for use by state employees. Finally, there is the type of political benefit which can accrue to elected state officers when they are given copies of publications which they can distribute to the public, and in particular to their constituents in order to generate good will.

Before discussing which of these "benefits" fall within the ambit of Section 82045(c), we observe that although this section includes gifts and necessitates reporting of gifts given to agency officials, legislative officials and elected state officers, the section is broader and more inclusive than the definition of the term "gift" contained in Section 82028. The definition of a gift excludes informational material, whereas providing such material under the circumstances comprehended by Section 82045(c) will constitute

a reportable payment to influence legislative or administrative action. See p. 4, supra. We also observe that our discussion herein of the type of "benefits" encompassed by Section 82045(c) is premised on the notion that the examples provided by the Club generally do not occur in the context of attempting to influence a matter pending before the Legislature or another state agency.<sup>4/</sup>

With respect to the first type of benefit, that involving giving something directly to an official for his or her own use, we perceive a difference between informational material from which the recipient derives a personal benefit and informational material that is exclusively job related. We think that Section 82045(c) was designed to pertain to all situations which involve providing something free of charge directly to a legislative, agency or elective state official where the recipient official will derive some personal benefit from the item received. We conclude, therefore, that a reporting obligation will exist when the Club gives maps or publications to an agency official, a legislative official or an elected state officer under circumstances which involve making a gift (see p. 3, supra) or under circumstances which, although not involving a gift because the material is informational, produce a personal benefit to the recipient. We observe, moreover, that the payment will be reportable regardless of whether it occurs in the context of an attempt to influence a particular piece of legislative or administrative action.<sup>5/</sup>

On the other hand, we do not think it was the intent of the drafters of Section 82045(c) to include within its coverage the receipt of materials which are exclusively job related. If, therefore, the material provided directly to an agency official, legislative official or elected

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<sup>4/</sup> Regardless of the type of benefit involved, if the Club provides maps and publications as part of an attempt to promote, support, influence, modify, oppose or delay some specific legislative or administrative action pending before the Legislature or another state agency, this will constitute a payment to influence which must be disclosed pursuant to Section 86109(c).

<sup>5/</sup> There is one exception to this conclusion. If the recipient official is a dues paying member of the Club and is given the maps and publications on this basis, and on the same terms as other Club members, this will not constitute a payment to influence.

state officer is informational and exclusively job related, a Section 82045(c) payment to influence will not have been made.<sup>6/</sup>

Applying this standard to the examples provided by the Club, we find that when copies of the California Vehicle Code are given to certain state employees upon request for use in their work the Club will not have made a reportable payment to influence legislative or administrative action. Similarly, when special wall maps covering a designated area are given to a legislator for use in a legislative field office in connection with the legislator's official duties, this will not be reportable pursuant to Section 82045(c).

With respect to the second type of benefit involving the Club's occasional practice of providing maps or publications free of charge to an agency for distribution on a generalized basis to other state employees for use in their work or for distribution to the public, we conclude that this too usually will not involve the type of "benefit" comprehended by Section 82045(c) and, therefore, will not generate reporting obligations. Although maps and publications given indirectly to governmental officials through their respective agencies may "benefit" the recipient, we again think the benefit is essentially job related and not the type<sup>7/</sup> of personal benefit at which Section 82045(c) is directed.

Pursuant to this standard, we think that the following activities of the Club are not reportable as payments to influence: providing publications to the Department of Consumer Affairs for distribution to the public; providing the "Digest of Traffic Legislation" to various state agencies

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<sup>6/</sup> This does not mean, of course, that providing the material could not constitute another type of payment to influence and be reportable as such. If, for example, the material were provided at the request of the Club's lobbyist in connection with an attempt to influence some pending administrative action, it would involve a payment to influence pursuant to Section 82045(b). See p. 5, supra.

<sup>7/</sup> We want to clarify that merely giving material to a government official indirectly through his agency is not, in and of itself, determinative. If only a limited number of copies of the materials is provided by the donor and the recipients are specifically designated, this is the same as giving the materials directly to the official and the guidelines we previously have specified with respect to direct giving will apply.



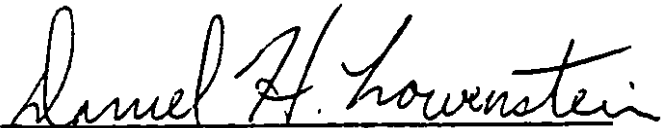
for distribution to their employees; providing the technical publication "Realistic Speed Zoning -- Why and How" to the Department of Transportation for use by its employees; providing special wall maps to the California Highway Patrol for use in its field offices; and providing folding maps to the Department of Transportation for use by its employees. We also conclude that authorizing the Legislature to use the Club's copyrighted base maps in developing reapportionment maps which are printed at state expense falls into this category. The material provided in this situation is given to the Legislature as a whole and then used by the legislators as part of the task of reapportioning legislative districts.

Finally, there is the issue, which is unique to elected state officials, of whether political benefits are included within the scope of Section 82045(c). This type of benefit is exemplified by the situation where the Club gives publications to legislators for distribution to the public.

Although the publication is given to the legislator for distribution on a generalized basis, we think that this situation is distinguishable from that just discussed and that it involves the type of "benefit" which should be reported pursuant to Section 82045(c). The Club is giving the legislator something he or she in turn can use to generate good will, a valuable commodity for any politician. Indeed, the "benefit" to the recipient in this context often will be more significant than the benefit involved in a direct giving for personal use.

Moreover, the "benefit" to the donor, in terms of the potential for influence with the recipient elected officer, probably is greater in this situation than in the case where an agency is provided with publications to distribute to the public. Although Section 82045(c) speaks in terms of benefit to the recipient official, its presence is premised on the notion that something which benefits the recipient also "benefits" the donor by enhancing the donor's influence with the recipient. In deciding which types of benefits are encompassed by Section 82045(c), we must consider this "benefit" to the donor, as well as the benefit to the recipient; and when the benefit to the donor, in terms of the potential for influence, is significant, disclosure of the payment is required. Accordingly, we conclude that providing publications to an elected state officer for distribution to the public involves a payment to influence legislative or administrative action within the meaning of Section 82045(c).

Approved by the Commission on January 4, 1977.  
Concurring: Brosnahan, Carpenter, Lowenstein and Quinn.  
Abstained: Lapan.

  
Daniel H. Lowenstein  
Chairman